

Exhibit B

Yaeger, Michael

From: Echenberg, Janis (USANYS) <Janis.Echenberg@usdoj.gov>
Sent: Thursday, October 19, 2017 2:58 PM
To: Yaeger, Michael; Boone, Robert (USANYS) 1; Zhou, David (USANYS); Podolsky, Matthew (USANYS)
Cc: Bohrer, Barry; Coster, Abigail; Gladstein, Andrew; 'Milt Williams'; Daniel Gitner; 'Jun Xiang'; 'Rachel Berkowitz'; 'Samantha Reitz'; 'Steve Coffey'; 'Scott Iseman'
Subject: RE: United States v. Percoco. et al.

Michael,

As set forth in our letter, we believe that all of the referenced acts are direct proof of the crimes charged. That said, given the nature of the actions, we noted these particular acts as potential 404(b) as well. With regard to New York state employees, we believe those acts are admissible under 404(b) to show, among other things, opportunity. With regard to CHA, we also believe those acts are admissible to show, among other things, motive, intent, opportunity, preparation, knowledge and absence of mistake.

Thanks,
Janis

From: Yaeger, Michael [<mailto:Michael.Yaeger@srz.com>]
Sent: Tuesday, October 17, 2017 2:50 PM
To: Echenberg, Janis (USANYS) <JEchenberg@usa.doj.gov>; Boone, Robert (USANYS) 1 <RBoone1@usa.doj.gov>; Zhou, David (USANYS) <DZhou@usa.doj.gov>; Podolsky, Matthew (USANYS) <MPodolsky@usa.doj.gov>
Cc: Bohrer, Barry <Barry.Bohrer@srz.com>; Coster, Abigail <Abigail.Coster@srz.com>; Gladstein, Andrew <Andrew.Gladstein@srz.com>; 'Milt Williams' <mwilliams@wmhlaw.com>; Daniel Gitner <dgitner@lswlaw.com>; 'Jun Xiang' <jxiang@lswlaw.com>; 'Rachel Berkowitz' <rberkowitz@lswlaw.com>; 'Samantha Reitz' <sreitz@lswlaw.com>; 'Steve Coffey' <scoffey@oalaw.com>; 'Scott Iseman' <siseman@oalaw.com>
Subject: United States v. Percoco. et al.

Janis, Robert, David, and Matt,

Regarding your letter of October 13, 2017 to Mr. Percoco, what is the basis provided by Federal Rule of Evidence 404(b) under which you would offer (i) the conduct described in your letter as “threaten[ing] at least four New York State employees” with efforts “to prevent them from finding future employment,” and (ii) the conduct associated with Clough Harbor and Associates LLP?

Your letter states that it may seek to introduce such conduct as proof of "motive, opportunity, intent, preparation, plan, knowledge, identity, and/or absence of mistake or accident." But it is not clear to us how the identified conduct would prove any of these uses permitted under Rule 404(b), much less all of them.

In the interest of avoiding unnecessary motion practice, we seek clarification.

Sincerely,

Barry A. Bohrer
Michael L. Yaeger

Andrew D. Gladstein
Abigail F. Coster

Schulte Roth & Zabel LLP
919 Third Avenue, New York, NY 10022
212.756.2000 | 212.593.5955 fax

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